

MINUTES
TENNESSEE BOARD OF OSTEOPATHIC EXAMINATION
August 24, 2005

A regular meeting of the Tennessee Board of Osteopathic Examination was held in the Tennessee Room located on the Ground Floor of the Cordell Hull State Office Building on August 24, 2005.

Members Present: Donald H. Polk, DO; Paul Smith, Jr., DO; Joyce Ann Brown, DO
Rafael Sanchez, DO and Janis Hinton, Citizen Member

Staff Present: Rosemarie Otto, Medical Board Director, Sheila Bush, Administrator, Robert Kraemer, Advisory Attorney, Jerry Kosten, Rules Coordinator, Lea Phelps, Disciplinary Coordinator, Lori Doty, Attorney, Andre Crismon, Attorney and Robert Feldman, Administrative Law Judge

Members Absent: Jill Robinson, DO

The Board convened at 9:30 am with the Vice-President, Dr. Polk, presiding. Dr. Polk determined that a quorum of members was present in order to conduct Board business.

Ratify Minutes of Previous Meeting

Dr. Smith made a motion to accept the minutes from the March 23, 2005 meeting. Dr. Sanchez seconded the motion. Motion carried.

Disciplinary Report

Ms. Phelps, Disciplinary Coordinator, informed the Board that there are 3 licensees currently being monitored.

Managers Report

Ms. Otto, Executive Director for the Medical Board gave the Director/Manager report to the Board.

Investigative Report

Ms. Phelps, gave the investigative report. There has been no change from the last meeting.

Office of General Counsel Report

Mr. Robert Kraemer read his report to the Board and reported that there were ten open disciplinary cases in the Office of General Counsel. Mr. Kraemer also informed the Board of the 2005 legislation which consist of Public Chapters 12-Legible Prescriptions, 113- Medical Records Liability, 118- Medical Records Access, 164-Prohibits price gouging on vaccines and inoculations during a Commissioner declared medical emergency, 172-Urges physicians who treat patients, hypertension or a family history of kidney disease to test those patients for chronic kidney disease if the patient consents, 208-Limits liability for those practicing in free clinics, 219-Requires doctors to prepare statements for patients in school who can administer their own anaphylaxis medications, 222-RN in assisted care living facilities can determine and pronounce death under certain circumstances, 231- Authorizes physicians to send and home care agencies to accept electronically signed, electronically mailed patient orders, 250- Extends eligibility for the free clinic special volunteer license to those who want to provide services for a benevolent or humanitarian project outside the state, 333- Physician Assistants can determine and pronounce death if it is within their protocols, 434- Pharmacists must fill prescriptions with generic absent a physician's statement of medical necessity for the brand medication on the prescription, and 407- Advertising and titles

Financial Report

Ms. Otto gave the financial report and informed the Board with the fee increase that went into effect on March 30, 2005, that they are moving in the right direction to eliminate their deficit.

Rulemaking Hearing

Jerry Kosten, Rules Coordinator, presented to the Board rules concerning criminal background checks for all new applicants. A rulemaking hearing was held on July 6, 2005. Dr. Brown made a motion to accept the new rules and Dr. Smith seconded the motion. A roll call vote was taken. The motion carried on the affirmative.

Mr. Kosten also requested authorization to have a rulemaking hearing for rules concerning prescription writing, osteopathic professional corporations and limited liability companies, requirements for x-ray operators to conduct bone densitometry, revision of X-Ray operators certification and course providers requirements, the use of titles and reconsiderations and stays for disciplinary actions. Dr. Brown made a motion to authorize a rulemaking hearing and Dr. Smith seconded the motion. The motion carried.

Agreed Orders

Samuel Chung, DO- Dr. Chung was present and represented by legal counsel, Mr. C. J. Gideon. Mr. Andre Crismon represented the State. The Notice of Charges and Agreed Order were handed out to the Board for review. Dr. Chung is charged with violating T.C.A. 63-0-101, T.C.A. 63-9-111 (b) (1), (2) and (9). The Agreed Order states that Dr. Chung's license will be reprimanded and Dr. Chung will be assessed one hundred and thirty (131) Type C civil penalties in the amount of one hundred (\$100.00) dollars for each referral made in which Dr. Chung received remuneration in violation of the statute for a total amount of thirteen thousand (\$13, 000.00) dollars. Dr. Chung will also be assessed case costs. Dr. Sanchez made a motion to accept the Agreed Order and Dr. Brown seconded the motion. The motion carried.

Consent Order

Robert Burnett, DO- Dr. Burnett was neither present nor represented by legal counsel. Lori Doty represented the State. Ms. Doty handed out the Consent Order to the Board for review. Dr. Burnett is charged with violating T.C.A. 63-9-111(b) (1). Dr. Burnett must surrender his Tennessee license. Dr. Burnett cannot reapply for a new Tennessee medical license prior to the expiration of at least one (1) full year from the effective date of the Consent Order. If Dr. Burnett decides to reapply for licensure, he should have the advocacy of the TMF and must personally appear before the Board. Dr. Burnett was also assessed costs. Dr. Sanchez made a motion to accept the consent order and Dr. Brown seconded the motion. The motion carried.

Contested Case

Dr. Gary D James, DO- Dr. James was present but not represented by legal counsel. Andre Crismon represented the State. The Honorable Robert Feldman, Administrative Law Judge presided. Ms. Doty handed out Notice of Charges and orders from the State of Kentucky. Dr. James is charged with violating T.C.A. 63-9-111 (a) (3) and (b) (a) (21). Formal charges were filed against Dr. James by the Kentucky Board of Medical Licensure for over prescribing to family members and inadequate recordkeeping. Dr. James voluntarily surrendered his Kentucky medical license on September 10, 2002. Mr. Crismon gave his opening statement and submitted proof to the Board. Dr. James gave his opening statement and requested to have his witnesses sworn in. Mr. Crismon objected because his office did not have access to a witness list from Dr. James. Jared James, Dr. James's son was denied as a witness, but Pamela James, wife of Dr. James, was called to the stand. Dr. James wanted to have Mrs. James take the stand as a witness to his mental capabilities at the time of the signing of the Kentucky Agreed Order. Mrs. James has her doctorate in Pharmaceutical. Dr. James asked Mrs. James about his mental capabilities at the time of

the Agreed Order, and she stated that he was sick, so sick that she would not let him drive to the hearing. Dr. Smith asked Mrs. James when she took Dr. James to the emergency room or to a mental hospital. Mrs. James stated that she did not take Dr. James to the hospital but took him home after he signed the Kentucky Agreed Order. Dr. James concluded his questioning of the witness. Mr. Crismon gave his closing statement followed by Dr. James. During the Board's discussion Dr. James left the meeting. Dr. Smith made a motion to immediately suspend Dr. James license and in order to reapply for licensure he must fulfill all requirements listed in the State of Kentucky's Agreed Order, have TMF advocacy and assessed case cost. Dr. Sanchez seconded the motion. The motion carried.

Robert Chatfield, DO- Dr. Chatfield was present and represented by Dan Warlick. Andre Crismon represented the State. The Honorable Robert Feldman, Administrative Law Judge presided. Mr. Crismon gave his opening statement followed by Mr. Warlick. This case was continued due to time conflicts and will resume at the next scheduled meeting to be held November 9, 2005.

General Discussion

Ms. Otto introduced to the Board Kevin Wright, Executive Director for Tennessee Technology Access Project. Tennessee Technology Access Project provides Tennesseans who have disabilities with comprehensive information related to assistive technology that can help someone with disabilities to live as independently as possible. Mr. Wright gave a presentation and just wanted the Board members to make the information available in their offices and communities where they work. This information will also be placed on the Board's website and in their upcoming newsletter.

Ms. Otto introduced Larry Arnold, M.D., to the Board. Dr. Arnold is the full time medical director for the Board of Medical Examiners. One of his duties is to review all complaints against the medical doctors received in the Bureau of Investigations. Ms. Otto explained to the Board the difficulty in obtaining an osteopathic physician to review those complaints on a timely basis. She asked the Board to permit Dr. Arnold to review the complaints on behalf of the Osteopathic Board of Examinations assuring them that should he have any questions, he would consult with an osteopathic physician. Dr. Smith made a motion to allow Dr. Arnold to review all complaints (P1 and P2) in BIV. The motion was seconded by Ms. Hinton. Dr. Polk asked for a roll call vote. Members voting yes were: Smith, Polk, Hinton and Brown. Members voting no were Sanchez. The motion passed 4 to 1.

Ratification of New Licenses, Reinstatements and Fail to Renew

Dr. Polk made a motion to ratify the new osteopathic physician licensees, midwives and x-ray operators, reinstatements and failed to renew licenses. Ms. Hinton seconded the motion. The motion carried.

Ms. Hinton made a motion to adjourn at 4:45 p.m. Dr. Brown seconded the motion. The motion carried.

Donald Polk, DO, Secretary

SB/G4035319/BOEmin